Development of Standards and Guidelines for Healthcare Surge during Emergencies

Funding Sources

NOTE: This document is the first draft output from the Funding Sources work team. It is the culmination of input received from multiple sources which includes ideas generated by stakeholders, reference material gathered through research, documents submitted by stakeholders, and analysis of current regulations and statutes. It is a work in progress and will continue to be refined over the next few weeks. We solicit your feedback on the content of this document. Should you have reference material or ideas, please contribute them. The quality and effectiveness of this work is ultimately decided by you, the stakeholder.

Introduction

Providing healthcare during a large scale public health emergency presents significant challenges for healthcare facilities, licensed healthcare professionals, and communities. During emergency events, healthcare systems must convert quickly from their existing patient capacity to "surge capacity" - a significant increase beyond usual capacity - to rapidly respond to the needs of affected individuals. The demands of the emergency may prevent compliance with the existing healthcare standards. Just as California has healthcare standards for use under normal operations, it is essential that California provide guidelines that identify the extent to which existing standards can be flexed or waived for healthcare delivery during emergencies.

Surge planning for the healthcare system is a substantial and complex challenge. In a time of significant disaster, a successful plan must provide flexibility to address capacity (volumes of patients) and capabilities (types of illnesses) that emerge above baseline requirements. The issues addressed are diverse and include standards of practice during an emergency, liability of hospitals and licensed healthcare professionals, reimbursement of care provided during an emergency, operating alternate care sites, and planning considerations for surge operations at individual hospitals.

Upon completion of this project, stakeholders will have access to a *Standards and Guidelines Manual* that will serve as a reference manual on existing statutory and regulatory requirements identifying what will be flexed or modified under different emergencies; *Operational Tools* that include forms, checklists and templates to facilitate and guide the adoption and implementation of statutory and regulatory requirements outlined in the Standards and Guidelines Manual; and a *Training Curriculum* outlining intended audience, means of delivery and frequency of training that will enable adherence to the policies and overall readiness of the healthcare delivery system.

The deliverables will serve as the basis for planning and operations of healthcare facilities, providers and communities during an unexpected increase in demand for healthcare services. The deliverable will focus on eight areas: (1) Declaration and Triggers; (2) Existing Facilities; (3) Alternate Care Sites; (4) Personnel; (5) Supplies, Pharmaceuticals and Equipment; (6) Funding Sources; (7) Administrative; and (8) Population Rights.

Funding Sources

The goals of the Funding Sources work team are to identify barriers that may cause healthcare services to be interrupted for some or all of the State's population during an emergent event, and to compile recommendations for how these barriers can be addressed. This work team is also building an understanding of current practices and distributing information about those practices so healthcare providers can make the most effective use of the current system. These goals are intended to facilitate knowledge of funding options for pre-planning and healthcare services that are provided during an emergency to lessen concerns about reimbursement in the care equation for Californians.

This document is intended to outline the various ways in which the financial needs of the healthcare system may be met during a surge, recognizing that those needs may change with the duration and magnitude of a surge. With that in mind, this document outlines three types of funding responses, corresponding to varying levels of modification that might be required to meet the financial needs of the healthcare system. This document, however, is not intended to address the inefficiencies and fragmentation of the current system and is meant to serve only as a guide to funding and reimbursement during surge scenarios.

This section outlines how the funding environment in its current form can respond to the funding and reimbursement needs of the healthcare system during a surge. The goal of this section is to make

maximum use of the existing financial infrastructure as though no surge were taking place. Included in this section are recommendations for how payers, both public and private, may reimburse under surge conditions and a compilation of sources of funding for pre-disaster planning and disaster response.

Section Two addresses an elevated financial response that may be needed as a surge develops in duration and magnitude. This section focuses on additional sources of funding that may be needed to finance healthcare during a surge including how current funding sources can be leveraged or modified to meet the needs of the healthcare system in this situation and how new funds such as Foundation resources might be used.

The final section outlines a financial response that would be needed in the most prolonged and immense of surges. This section identifies recommendations for altering the current system or developing alternative financial mechanisms during a catastrophic surge. These are long term solutions outlining conceptual solutions to financing healthcare during and after a surge.

Guiding the development of these solutions are several important considerations. These considerations are:

- Surge situations inherently create excess cost. Cost is elevated during pre-planning preparedness and truly hits excess during the surge response. Cost excesses will be noticeable in staffing, supplies and equipment, administrative, excess capacity, and unanticipated costs such as additional security, manual systems, and managing volunteers.

- Healthcare payers should be responsible for payment of costs they would contractually be accountable for under non-surge situations. Recognizing that surge conditions may preclude the ability to follow normal reimbursement rules and protocols while providing care that would be reimbursable under non-surge conditions when those rules and protocols are met, it is believed that that care should continue to be reimbursed and mechanisms should be developed to solve the administrative complications of a surge.

- For disaster funding, the guiding principle must be simplification and uniformity. The emergence of a disaster or public health emergency requiring the healthcare system to surge will stress the entire healthcare system in ways that cannot be fully understood in non-disaster situations. Solutions must be simple and consistent in order to be effective during a surge response. This need for simplification and uniformity drives the development of the three types of funding responses.

- Viability of the healthcare system post-event should be a conscious consideration. However, fixing the inefficiencies and fragmentation of the current system is not part of our charge. Our initiative is focused on responding to the needs for healthcare in a short-term post disaster event or more long-term as a result of a pandemic flu. Fixing any underlying issues is the current health system outside of our scope.

- Incremental solutions that can be developed and deployed quickly are desired while more stable long-term solutions are developed. This incremental response is reflected in the three types of funding responses outlined below.

- Volunteers and federally funded agencies will not be "reimbursed". It is assumed that serving during disasters is a fulfillment of personal or entity mission. This document does not outline reimbursement or funding opportunities for everyone who may provide care during a surge as it is expected that there will be a considerable number of volunteers and that public resources will be used to the maximum extent possible.

- Some portion of care provided during a surge will be uncompensated. Our current healthcare system includes uncompensated care and this characteristic will remain during a surge. This document will identify sources of funding for the uninsured and make recommendations to relieve the burden felt by providers during a surge that exceed typical levels of uncompensated care.

- Creating ad-hoc healthcare entities is not a goal of our initiative and should not be consciously considered. All healthcare entities must be initiated and approved according to the guidelines established by Existing Facilities and Alternate Care Sites. Only funding for those approved entities are addressed in this document.

Current Funding Environment

This section outlines how the funding environment in its current form can respond to the funding and reimbursement needs of the healthcare system during a surge. The goal of this section is to make maximum use of the existing financial infrastructure as though no surge were taking place. Included in this section are recommendations for how payers, both public and private, may reimburse under surge conditions and a compilation of sources of funding for pre-disaster planning and disaster response.

During a surge, the enforcement of certain rules and requirements may preclude the effective and timely care of patients affected by the event. To ensure that care is delivered to meet the healthcare needs during a surge, it is recommended that certain rules and requirements be flexed and waived during these events. This section provides answers to such questions as "how can current sources be flexed within payer / program rules?", "how will out-of-state/other providers who are not currently enrolled with specific payers in California be paid?", "how might an ACS get reimbursed?" and "how will expanded hospital capacity be reimbursed?"

The Funding Sources work team recommends that the following assumptions and actions are recognized and occur in order to facilitate and expedite the flow of funds necessary to sustain an effective health care delivery system during a surge requiring this initial type of funding response:

- All treatment authorization requirements should be eliminated during a surge event.
- At the onset of surge all prior authorization, co-pays, and network requirements, including out-of-network requirements for those whose coverage may reside in other states or countries, should be waived.
- Insurance coverage that is in place when the surge begins should remain in place for defined period during and after surge, regardless of whether premiums are maintained. This recommendation would hold for Medicaid, Medicare and other state structured programs.
- Licensed, eligible emergency vehicles will be paid according to usual payment guidelines.
- Transportation resources such as municipal, hospital-based, or privately owned will likely not be reimbursed.
- Charity care is a reasonable funding source during surge event.
- Healthcare payers should be responsible for payment of costs they would contractually be accountable for under non-surge situations.

To develop these recommendations for California, relevant waivers and declarations from previous events were compiled. These waivers and declarations were utilized primarily in Louisiana after Hurricanes Katrina and Rita in 2005. The Funding Sources work team will review these waivers and declarations, develop recommendations for utilizing similar waivers in California, identify gaps between existing waivers and the needs of the California healthcare system, and develop recommendations for waivers that would fill those gaps. These waivers and declarations address responses of both public and private payers.

The rules, requirements and considerations that will be addressed are:

- Existing Waivers and Declarations

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- Network Requirements, Out of State Physicians
- Pre-Authorization Requirements
- Pharmaceutical Coverage
- Co-Pay Requirements
- Non-Payment of Premiums and Coverage Continuity
- Claims Management
- Facilities providing services under surge conditions
- Alternate Care Site reimbursement and funding

More detail on these waivers and declarations can be found in Appendix A at the end of this document.

Funding Sources

This section outlines a list of funding sources that can be used to prepare, support and replenish the healthcare system as needed in response to a surge. This list is a tool that a range of stakeholders including providers, volunteers, government entities and individuals can use to identify relevant sources of funding for their surge related needs. This list identifies funding sources by what services and entities are eligible for funding and describes the rules for accessing those funds. This list also includes both pre-disaster planning and disaster response funding and is a tool that can be used by stakeholders in advance of surge to identify funds to aid in planning and preparedness, as well as funds that can be accessed in the moment of surge. This list provides answers to such questions as "how does pre-disaster planning get funded / allocated?" and "what are the current funding sources available for a surge?"

Sources of funding that are outlined in this list are:

- Pre-Disaster Mitigation Program
- Hazard Mitigation Grant Program
- Pre-Disaster Mitigation Loan Program
- Economic Injury Disaster Loans for Small Businesses
- Emergency Management Institute
- Continuity of Operations Programs
- Superfund Amendments and Reauthorization Act
- Flood Mitigation Assistance
- Repetitive Food Claims program
- Severe Repetitive Loss program
- Public Assistance Grant Program
- Disaster Relief Program

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- State Homeland Security Program
- Urban Areas Security Initiative Program
- Metropolitan Medical Response System Program
- Disaster Assistance for State Units on Aging and Tribal Organizations in National Disasters Declared by the President
- National Bioterrorism Hospital Preparedness Program
- Bioterrorism Training and Curriculum Development Program
- Emergency Management Performance Grants
- NDMS Uncompensated Care Pools
- Catchall Expenses
- Emergency Medical Services Appropriation
- California Medical Services Program
- Medically Indigent Services Program

This list is supported by an overview of the current reimbursement system which includes enrollment and eligibility data, as well as coordination of benefit information for the various payers.

Leveraging Current Sources

This section addresses an elevated financial response that may be needed as a surge develops in duration and magnitude. This section focuses on additional sources of funding that may be needed to finance healthcare during a surge including how current funding sources can be leveraged or modified to meet the needs of the healthcare system during a surge and how new funds such foundation funding might be used.

In some surge events, the current sources of funding may not be sufficient to meet the funding needs of the healthcare system during a surge. Some of the questions that this section answers are "how can payments from a range of funding sources (FEMA, Medicare, Medi-Cal, private payers) be accelerated?", "are there opportunities to alter current reimbursement mechanisms to allow facilities to access funds during times of limited cash flow?" and " how do we ensure that the healthcare system stays infused with money on a timely basis?"

To address these questions and the need for a more elevated funding response, the following ideas to leverage and support the current system were identified:

- Provide for re-allocation of funds from non-functioning to functioning facilities during a surge event. Components would include developing a recommendation for how Disproportionate Share Hospital funding (DSH) reallocation should occur in CA post surge. This recommendation will be drafted with a few key principles in mind:
    - Ensure functioning hospitals receive full historical allotment
    - Rules around non-federal share of contribution should flex
    - State should be granted flexibility to re-distribute funds where appropriate considering changed long-term needs
    - Should re-distribution occur, the surge period should be excluded from the three year retroactive analysis period

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- Include in the guideline an outline of how GME funding can be transferred from non-functioning facilities or programs after a surge event

- Develop guidelines to increase and extend eligibility for patients. One recommendation is to develop a Disaster Relief Medicaid proposal modeled after guidelines developed in Louisiana and New York to expand Medicaid eligibility for both patients and providers.

- Develop guidelines for how money can or might be expedited or advanced from various payers, including Medicare Part A and B, Medi-Cal, private payers and FEMA, during a surge. Draft template LOUs and reconciliation procedures will also be included and are being developed by the work team.

- Develop guidelines for how health plan casualty insurance should help cover excess demand e.g., earthquake insurance to help cover facilities excess costs, terrorism or pandemic for excess utilization.

- Outline recommendations for how the CA Endowment funds or other Foundation funds might be used during a surge.

- Identify other opportunities for leveraging current funding sources.

The content of these recommendations and guidelines are in development.

Alternative Sources for Future Recommendations

The final section outlines a financial response that would be needed in the most prolonged and immense of surges. This section identifies recommendations for altering the current system or developing alternative financial mechanisms during a catastrophic surge. These are long term solutions outlining conceptual solutions to financing healthcare during and after a surge.

The long term solutions outlined below are premised on the assumptions that existing methods of health care cost recovery are complex, cumbersome and unmanageable for prolonged surge events. Long term, existing systems must be simplified and uniform, especially during a surge event. The following recommendations are under consideration as a means to this end.

- A Surge declaration will require payers and providers of all types to adhere to a disaster funding plan.

- Payers and employers will pay into a catastrophic funding source that mimics International Act Trust Fund model. This recommendation would provide additional dollars for the healthcare system should a catastrophic event occur.

- Payments will be standardized (an agreed upon fee schedule) for services among hospitals, other providers and all payers during a surge event. This recommendation would alleviate the complexity and inequity of the current system with its variable rate structures. Utilizing a single payment system would ensure that all providers were paid equally and equitably for their service during a surge.

- Administrative reporting will be simplified and will be sufficient to secure reimbursement, which will be differentiated by broad descriptions of the level of care provided.

- Where contracts are not in place, an agreed upon base fee will be administered during a surge, including mental health and private providers. This component recommends the development of a standardized fee schedule to be developed under the auspices of the State, for use during a surge when no contract exists between healthcare entities. This base fee schedule would alleviate the litigation and other complexities that result from a lack of previously defined contracts and relationships.

Appendix A

This section highlights the ways in which previous waivers or declarations could be applied to surge situations in California. Initial recommendations are included within each rule and requirements. **Please note: additional research and development of applicable waivers and declarations is still in progress.**

Existing Waivers and Declarations

Under 42 U.S.C. § 1320b-5 (section 1135 of the Social Security Act), the Secretary of Health and Human Services has authority to waive certain requirements of CMS programs in an emergency area during a federal emergency period. These waivers are known as Waivers of Federal CMS Requirements or "Section 1135 Waivers". An “emergency area” is a geographical area in which, and an “emergency period” is the period during which, there exist two types of declared emergencies: an emergency or disaster declared by the President under the National Emergencies Act or the Stafford Act, and a public health emergency declared by the Secretary of HHS.[1] At the Secretary’s discretion, waivers that are authorized after the emergency has occurred may be made retroactive to the beginning of the emergency period.[2] With 2 exceptions (EMTALA and HIPAA), the waivers generally last for the duration of the emergency period or until CMS determines that the waiver is no longer necessary. However, if a hospital regains its ability to comply with a waived requirement before the end of the declared emergency period, the waiver of that requirement no longer applies to that hospital.[3]

These waivers can be used to flex CMS rules and requirements during a surge, including Medicare, Medicaid and SCHIP, possibly allowing for the reimbursement of physicians, providers and facilities operating under surge conditions. These waivers can address the following requirements:

Conditions of Participation
The Secretary of HHS may waive:
a. Conditions of participation or other certification requirements for an individual health care provider or types of providers,
b. Program participation and similar requirements for an individual health care provider or types of providers, and
c. Pre-approval requirements.

Licensure of Health Care Professionals
The Secretary of HHS may waive “requirements that physicians and other health care professionals be licensed in the state in which they provide services, if they have equivalent licensing in another state and are not affirmatively excluded from practice in that state or in any state a part of which is included in the emergency area.”

Payments under a Medicare+Choice Plan
The Secretary of HHS may waive limitations on payments under 42 U.S.C. § 1395w-21(i) for health care items and services furnished to individuals enrolled in a Medicare+Choice plan by health care professionals or facilities that are not included under that plan.

State Alternate Standards of Care
This MAY be allowed under Section 1135 (b) (1) allowing HHS to waive conditions of participations, allowing facilities and practitioners to provide care that does not meet CMS approved guidelines while operating under State Alternate Standards of Care waivers.

Expanded Clinical Areas

[1] 42 U.S.C. § 1320b-5(g)(1)
[2] 42 U.S.C. § 1320b-5(c)
[3] MA Influenza Pandemic Preparedness Plan, October 2006. Section 10: Legal Considerations For Pandemic Influenza

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This MAY be allowed under Section 1135 (b) (1) allowing HHS to issue waivers to non-traditional facilities operating under state "special project" licensing waivers to be recognized by CMS for reimbursement purposes.

For private payers, precedent set in Louisiana can serve as a guide for California. Post Hurricanes Katrina and Rita, under the authority of the Governor of Louisiana's Emergency Declarations and Executive Orders, the Commissioner of Insurance for the state of Louisiana issued Emergency Rules 15, 17, 19 and 20. These Emergency Rules:

- Suspended certain statutes and regulations regarding health insurance in Louisiana.[4]
- Applied to primary and limited secondary parishes in Louisiana affected by the hurricanes over specific time periods.[5],[6]
- Applied only to products regulated by the Louisiana Department of Insurance.[6]
- Waived all restrictions relative to out-of-network access. [6]
- Suspended:
    - Medical Certifications
    - Referrals
    - Medical Necessity Reviews
    - Notification of Hospital Admissions
    - Right to Conduct Medical Necessity Reviews (for non-elective services)
- Stipulated that claims for an initial 30 day supply prescription medication could not be rejected or pended regardless of date of last refill.
- Stipulated that when a claim is submitted but the premium has not been received the Insured was responsible for co-payments, deductibles and coinsurance.
- Stipulated that:
    - Individual and group policies could not be cancelled or terminated during the State of Emergency even if premiums had not been received.
    - No renewals were allowed until January 1, 2006
- Stipulated that when a claim is submitted but the premium has not been received:
    - The Insured was responsible for co-payments, deductibles and coinsurance
    - The Insurer paid 50% of either the contracted rate or the non-participating rate
    - The Provider accepted 50% as payment in full and could not bull the patient
    - If the entire premium was subsequently received, the claim was readjusted and paid according to the contract.
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Network Requirements, Out of State Physicians

[4] Louisiana State Medical Society, "Louisiana Department of Insurance's Final Emergency Rules and Directives relative to Suspension of Certain Health Insurance Laws and Regulations Governing Louisiana Licensed Health Insurers
Post Hurricane Katrina and Rita"
http://www.lsms.org/Hurricanes/2005%20Emergency%20Rules%20%20Directives.pdf
[5] Title 37, Insurance, Part XI Chapter 27: Emergency Rule 15 and 17
[6] Louisiana Department of Insurance, "Hurricanes Katrina and Rita Health Insurance Protections," http://www.ldi.state.la.us/Documents/Health/LHCC/2006_HealthCareConference/HealthInsuranceProtectionsPrintFile.ppt.

Private payers, either through voluntary means or governmental declaration as utilized in Louisiana, should waive network requirements for a specified period of time following a defined surge. Absent any other declaration or required action, the issuance of relevant CMS waivers should serve as a guide for private payers to follow during a surge.

Existing CMS waivers on *Licensure of Health Care Professionals and Payments under a Medicare+Choice Plan* should be leveraged during a surge in California. Upon additional review of existing CMS waivers, develop recommendations for additional CMS waivers to be used during a surge to flex CMS requirements.

Similar to Louisiana post Katrina, the State should request a waiver permitting Medicare Advantage enrollees to use out-of-network providers in an emergency situation.

Pre-Authorization Requirements

Private payers, either through voluntary means or governmental declaration as utilized in Louisiana, should waive pre-authorization requirements for a specified period of time following a defined surge. Absent any other declaration or required action, the issuance of relevant CMS waivers should serve as a guide for private payers to follow during a surge.

Existing CMS waiver on *Payments under a Medicare+Choice Plan* should be leveraged during a surge in California. Upon additional review of existing CMS waivers, develop recommendations for additional CMS waivers to be used during a surge to flex CMS requirements.

Pharmaceutical Coverage

Private payers, either through voluntary means or governmental declaration as utilized in Louisiana, should waive pharmaceutical refill restrictions for a specified period of time following a defined surge. Absent any other declaration or required action, the issuance of relevant CMS waivers should serve as a guide for private payers to follow during a surge.

Existing CMS waivers should be leveraged during a surge in California. Upon additional review of existing CMS waivers, develop recommendations for additional CMS waivers to be used during a surge to flex CMS requirements.

Co-Pay Requirements

Private payers, either through voluntary means or governmental declaration as utilized in Louisiana, should follow guidelines similar to those established in Louisiana whereby patients were responsible for their co-pays, deductibles and coinsurance. Absent any other declaration or required action, the issuance of relevant CMS waivers should serve as a guide for private payers to follow during a surge.

Non-Payment of Premiums and Coverage Continuity

Absent any other declaration or required action, the issuance of relevant CMS waivers should serve as a guide for private payers to follow during a surge.

Claims Management

Absent any other declaration or required action, the issuance of relevant CMS waivers should serve as a guide for private payers to follow during a surge.

Facilities Providing Services Under Surge Conditions

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Facilities that are deemed to meet the flexed requirements as defined by the Existing Facilities and who attest that all services are performed by qualified individuals, should receive payment either through the normal billing channels or through a disaster fee schedule yet to be developed.

Absent any other declaration or required action, the issuance of relevant CMS waivers, including the *Conditions of Participation* waiver, should serve as a guide for private payers to follow during a surge.

Alternate Care Site funding will come from the following primary sources (Full List TBD):

- FEMA
- EMSA